

WESTERN AMERICAN EXPLORATION CO.

IBLA 87-474

Decided January 10, 1990

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, increasing the rental for oil and gas lease W-72802 because the lands encompassed by the lease had been determined to be within a known geologic structure.

Affirmed.

1. Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases: Rentals

When the Bureau of Land Management has determined that any part of the lands described in a noncompetitive oil and gas lease is within a known geologic structure, the lessee is required to pay increased rental of \$2 per acre for the entire lease.

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases: Noncompetitive Leases

One challenging a Bureau of Land Management determination that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

APPEARANCES: Arthur E. Meinhart, Aurora, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Western American Exploration Company (Western) has appealed from a decision dated April 6, 1987, issued by the Wyoming State Office, Bureau of Land Management (BLM), increasing the rental for oil and gas lease W-72802 to \$2 per acre, or fraction thereof, because the lands encompassed by the lease were within a known geologic structure (KGS) of a producing oil or gas field. The decision noted that the lands subject to lease are within the South Baxter Basin KGS which had been designated effective May 1, 1984.

In the statement of reasons for appeal, Western describes the area encompassed by the lease as the E½ sec. 24, T. 16 N., R. 104 W., sixth principal meridian, Wyoming. Western contends that the lands are not within the KGS of the South Baxter Basin field. Specifically, Western states:

A single dry hole drilled to 4,709' on the NW¼SE¼ of Section 24, Tp. 16 North, Range 104 West, Wyoming, has been drilled on this acreage. Production is several miles away from this oil and gas lease at its closest.

Accordingly, we respectfully recommend the decision of April 6, 1987, be vacated and the annual delay rentals be lessened to the amount noted above.

[1] When BLM has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined addition to a KGS, the lessee is required to pay increased rental of \$2 per acre for the entire lease. 43 CFR 3103.2-2(d) (1987); 1/ Ronald C. Agel, 87 IBLA 255 (1985); Eagle Exploration Co., 83 IBLA 354 (1984).

[2] One challenging a Departmental determination that land is within the KGS of a producing oil or gas field has the burden of showing that the determination is in error. Eagle Exploration Co., supra at 356, and cases cited therein. See also Bender v. Clark, 744 F.2d 1424 (10th Cir. 1984).

It is well established that this Board may rely on reports of the Secretary's technical experts. Woods Petroleum Co., 86 IBLA 46, 52 (1985); John P. Brogan, 85 IBLA 379, 383 (1985). In Champlin Petroleum Co., 86 IBLA 37, 40 (1985), we noted that "[w]hile the conclusions drawn from geological data are subject to different interpretations, the Secretary is entitled to rely upon the reasoned opinion of his technical expert in the field," citing Bruce R. Anderson, 63 IBLA 111 (1982). The Secretary has traditionally delegated the duty for determination of the existence and extent of a KGS to his technical expert in the field. A determination by Departmental technical experts will not be set aside if it is not arbitrary or capricious, and is supported by competent evidence. Woods Petroleum Co., supra at 52; Davis Oil Co., 53 IBLA 62, 67 (1981). Courts have often deferred to technical determinations made by administrative agency experts. As noted by the Supreme Court in Federal Power Commission v. Florida Power & Light Co., 404 U.S. 453, 463 (1972):

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1/ That regulation provides:

"On lands within a lease issued under Subpart 3111 of this title after the effective date of this regulation which is later determined to be within a known geologic structure outside of Alaska \* \* \*, the annual rental shall be \$2 per acre or fraction thereof beginning with the first lease year after the expiration of 30-days notice to the lessee. During the first 5 years of the lease term, the same rental increase is applicable to leases issued under Subpart 3112 of this title."

A court must be reluctant to reverse results supported by such a weight of considered and carefully articulated expert opinion. Particularly when we consider a purely factual question within the area of competence of an administrative agency created by Congress, and when resolution of that question depends on "engineering and scientific" considerations, we recognize the relevant agency's technical expertise and experience, and defer to its analysis unless it is without substantial basis in fact.

Appellant merely states that a dry hole was drilled to a certain depth in sec. 24. No evidence was submitted, however, which would tend to contradict BLM's KGS determination. We are satisfied that the BLM geologic report provides ample support for BLM's position. 2/

BLM based its South Baxter Basin KGS determination upon a geologic report completed on May 1, 1984. In this report, BLM explained that the South Baxter Basin KGS was originally defined on December 2, 1941, with periodic additions over the years due to oil and gas development drilling, and that "[r]ecent drilling activity in the area has extended the presumptively productive limits of the field, necessitating another undefined addition to the existing South Baxter Basin KGS." BLM offered the following explanation of the manner in which it determined the boundary of the undefined addition:

The boundaries of the undefined addition to the South Baxter Basin KGS were determined based on the net effective reservoir zero-foot isopach lines calculated for each of the four producing formations described above \* \* \*. The net effective reservoir is defined as a subsurface thickness of rock that has sufficient porosity to permit the accumulation of crude oil or natural gas under adequate trap conditions, and is presumptively productive for oil or gas. The zero-foot net effective reservoir isopach line essentially outlines the limits of the trap, be it structural, stratigraphic, or a combination of both types. The net effective reservoir thickness was calculated for each well in the South Baxter Basin area by using any one, or multiple combinations of the following: reports of operation, completion reports, production tests, drill stem tests \* \* \*, IWR's, well logs (electric/induction logs, sonic logs, nuclear/density logs, temperature logs, and other miscellaneous logs as available), P.I. data, and other published and unpublished literature. The undefined addition to the South Baxter Basin KGS hereby includes all 160-acre spacing units (State spacing order), or portions

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2/ By Board order dated Sept. 29, 1987, BLM was directed to furnish the geologic data and analysis which served as the basis for its action. By memorandum dated Oct. 21, 1987, BLM informed the Board that the original geologic report with maps had already been filed with the case file for two other South Baxter Basin appeals, *i.e.*, IBLA 85-854 and IBLA 87-81. BLM also stated that Western had been given a copy of this report and accompanying maps. Appellant did not file any response challenging the report.

thereof, cut by the composite net effective reservoir zero-foot isopach line based on the Frontier, Dakota, Morrison, and Phosphoria Formations not within an existing KGS \* \* \*.

The data submitted by BLM support its determination that the lands included in appellant's lease offer are within a KGS. Appellant has not met the burden of demonstrating error in BLM's decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Gail M. Frazier  
Administrative Judge

I concur:

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R. W. Mullen  
Administrative Judge